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OFFICE OF PETITIONS

In re Application of :
Kwok Leung Lam, et al. :
Application No. 09/758,034 :
Filed: January 9, 2001 :
Attorney Docket No. WIW-001.01 :
:

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 23, 2004, to revive the above-identified application.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts (Notice) mailed April 5, 2001. The notice required the statutory basic filing fee, an oath or declaration under 37 CFR 1.63 and the requisite surcharge. Since no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the application became abandoned on June 6, 2001. A Notice of Abandonment was mailed on July 7, 2003. In response, on April 23, 2004, petitioner filed the present petition, the requisite filing fee and surcharge, a partially executed declaration and a petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.137(b) is **DISMISSED**.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee required by 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above in view of the deficiencies found in the partially signed declaration and the petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) and (2) as set forth above.

As to item (1), applicant appears to demonstrate that Mr. Fung was only presented with a declaration and assignment papers. Unless Mr. Fung was presented with a copy of the application papers (specification, claims and drawings), Mr. Fung could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given. In order to show that the inventor has refused to join in the application, petitioner must provide adequate proof that the application papers were sent or presented to the inventor, but that the inventor did not respond to the request that he sign the oath/declaration. Did the inventor receive the application papers? See Manual of Patent Examining Procedure, Section 409.03(d). The present petition fails to show that the inventor has refused to sign the declaration.

Further, Rule 47 applicant has failed to show that the inventor cannot be reached. While it appears a copy of the declaration and assignment papers were sent to the last known address of the non-signing inventor on June 20, 2003 and January 6, 2004, were the papers ever returned? What other efforts to locate the missing inventor were explored, e.g. contact through e-mail or telephone? The present petition fails to show that the inventor cannot be located.

As to item (2) the declaration of Mr. Lam does not set forth either his or Mr. Fung's residence and post office address. Accordingly, an oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by Mr. Lam on behalf of himself and Mr. Fung is required. See MPEP 409.03(a).]

The above-identified application cannot be revived until a declaration under 37 CFR 1.63 is filed in response to the Notice of Missing Parts mailed April 5, 2001 or a grantable petition in compliance with 37 CFR 1.47(a) is submitted.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. No further petition fee is required. However, the reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)", as well as the missing items noted above. Petitioner is advised that this is not a final agency decision.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By Hand: 2011 South Clark Place
Crystal Plaza Two, Lobby
Room 1B03
Arlington, VA 22202

The centralized facsimile number is (703) 872-9306.

The Power of Attorney filed April 23, 2004 is not accepted since the Power of Attorney is from an assignee and the Certificate required by 37 CFR 3.73(b) has not been received. However, in accordance with 37 CFR 1.34(a), the signature of Kevin Oliver appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. The correspondence address will not be changed. A courtesy copy of this decision is being mailed to petitioner. If Mr. Oliver desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

Any questions concerning this matter may be directed to the undersigned at (703) 305-9220.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Kevin A. Oliver
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